

**COPY****E-Filing**

05 OCT 13 PM 3:13  
 RICHARD W. WIENER  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

**JCS**

DENNIS J. HERRERA, State Bar #139669  
 City Attorney  
 JOANNE HOEPER, State Bar #114961  
 Chief Trial Deputy  
 SCOTT D. WIENER, State Bar #189266  
 Deputy City Attorney  
 Fox Plaza  
 1390 Market Street, 6<sup>th</sup> Floor  
 San Francisco, California 94102-5408  
 Telephone: (415) 554-4283  
 Facsimile: (415) 554-3837

Attorneys for Defendant  
 CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

CEDRICK PATTERSON,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
 FRANCISCO and DOES 1 through 15,

Defendants.

Case No.

**NOTICE OF REMOVAL (28 U.S.C. §§  
 1441, 1446)**

1 TO THE CLERK OF THE ABOVE COURT AND TO PLAINTIFF AND HIS COUNSEL  
2 OF RECORD: NOTICE IS HEREBY GIVEN that the City and County of San Francisco, named as  
3 defendant in the above-captioned action, No. 444569 in the files and records of the Superior Court  
4 of California for the County of San Francisco, hereby files in the United States District Court for the  
5 Northern District of California a Notice of Removal of said action to said United States District  
6 Court, pursuant to 28 U.S.C. sections 1441 and 1446, and are filing in said Superior Court a Notice  
7 of Removal.

8 Defendant City and County of San Francisco pursuant to 28 U.S.C. §§1441 and 1446,  
9 presents the following facts to the Judges of the United States District Court for the Northern  
10 District of California:

11 A civil action bearing the above-caption was commenced in the Superior Court of California  
12 for the City and County of San Francisco, Case No. 444569 on September 1, 2005, and is pending  
13 therein. The summons and complaint were served on the City and County of San Francisco on  
14 September 14, 2005. The complaint includes a claim for "violation of civil rights."

15 This action is one which may properly be removed to this Court pursuant to 28 U.S.C.  
16 sections 1441(a) and (b), because the complaint alleges a "violation of civil rights."

17 To the extent that plaintiff's complaint alleges a claim or cause of action other than violation  
18 of rights under the laws of the United States, said causes of action may be removed and adjudicated  
19 by this Court pursuant to 28 U.S.C. §1441(c).

20 Pursuant to 28 U.S.C. §1446(b), copies of the process, pleadings and other orders served  
21 upon defendant in this action are attached as Exhibit A. Defendant's answer and related documents  
22 are attached as Exhibit B.

1 WHEREFORE, defendant prays that the above action now pending in the Superior Court of  
2 California for the County of San Francisco be removed in its entirety to this Court for all further  
3 proceedings.  
4

5 Dated: October 13, 2005

6 DENNIS J. HERRERA

7 City Attorney

8 JOANNE HOEPER

9 Chief Trial Deputy

10 SCOTT D. WIENER

11 Deputy City Attorney

12 By: 

13 SCOTT D. WIENER

14 Attorneys for Defendant

15 CITY AND COUNTY OF SAN FRANCISCO  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

SUM-100

# SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

CITY AND COUNTY OF SAN FRANCISCO, DOES 1-15

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
CEDRICK PATTERSON

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
RECEIVED  
MAYOR'S OFFICE

05 SEP 14 AM 11:53

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CA, CITY AND COUNTY OF SF  
400 McAllister Street, San Francisco, CA 94102

## UNLIMITED JURISDICTION

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Byron C. Thompson, Esq. (SBN 85675) (510) 835-1600

1714 Franklin Street, Suite 350, Oakland, CA 94612

GORDON PARK-LI

DATE:  
(Fecha)

SEP - 1 2005

Clerk, by  
(Secretario)

ELIAS BUTT Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

[SEAL]

982.1(1)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>Byron C. Thompson, Esq. (SBN 85675)</b> <b>LAW OFFICES OF BYRON C. THOMPSON</b> <b>1714 Franklin Street, Suite 350, Oakland, CA 94612</b>  TELEPHONE NO: (510) 835-1600 FAX NO. (Optional): (510) 835-2077 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>CEDRICK PATTERSON</b>	<b>FOR COURT USE ONLY</b>  <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <b>ENDORSED FILED</b>  <i>San Francisco County Superior Court</i> </div> <b>SEP - 1 2005</b>  <b>GORDON PAMELLA GIORGI</b> BY: <b>ELIAS BUTT</b> <i>Deputy Clerk</i>
NAME OF COURT: <b>SUPERIOR COURT OF CA, SAN FRANCISCO</b> STREET ADDRESS: <b>400 McAllister Street</b> MAILING ADDRESS: <b>same as above</b> CITY AND ZIP CODE: <b>San Francisco, CA 94102</b> BRANCH NAME:	CASE NUMBER:  <div style="font-size: 1.2em; font-weight: bold; margin-top: 20px;">CGC · 05 - 4 44 5 6 9</div>
PLAINTIFF: <b>CEDRICK PATTERSON</b>  DEFENDANT: <b>CITY AND COUNTY OF SAN FRANCISCO</b>  <input checked="" type="checkbox"/> DOES 1 TO <u>15</u>	
<b>COMPLAINT—Personal Injury, Property Damage, Wrongful Death</b> <input type="checkbox"/> <b>AMENDED (Number):</b> Type (check all that apply): <input type="checkbox"/> <b>MOTOR VEHICLE</b> <input checked="" type="checkbox"/> <b>OTHER (specify):</b> <input type="checkbox"/> <b>Property Damage</b> <input type="checkbox"/> <b>Wrongful Death</b> <input checked="" type="checkbox"/> <b>Personal Injury</b> <input type="checkbox"/> <b>Other Damages (specify):</b>	
Jurisdiction (check all that apply): <input type="checkbox"/> <b>ACTION IS A LIMITED CIVIL CASE</b> Amount demanded <input type="checkbox"/> <b>does not exceed \$10,000</b> <input type="checkbox"/> <b>exceeds \$10,000, but does not exceed \$25,000</b> <input checked="" type="checkbox"/> <b>ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)</b> <input type="checkbox"/> <b>ACTION IS RECLASSIFIED by this amended complaint</b> <input type="checkbox"/> <b>from limited to unlimited</b> <input type="checkbox"/> <b>from unlimited to limited</b>	

1. PLAINTIFF (name): CITY AND COUNTY OF SAN FRANCISCO

alleges causes of action against DEFENDANT (name):

2. This pleading, including attachments and exhibits, consists of the following number of pages: \_\_\_\_\_

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor    ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):b. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor    ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):☐ Information about additional plaintiffs who are not competent adults is shown in Complaint—Attachment 3.
 RECEIVED  
 MAYOR'S OFFICE  
 05 SEP 11 AM 11:53

SHORT TITLE: PATTERSON v. CITY AND COUNTY OF SAN FRANCISCO

CASE NUMBER:

4. ☐ Plaintiff (*name*):  
is doing business under the fictitious name (*specify*):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

- a. ☒ except defendant (*name*): City & County of SF

- (1) ☐ a business organization, form unknown  
(2) ☐ a corporation  
(3) ☐ an unincorporated entity (*describe*):

- (4) ☒ a public entity (*describe*):  
Municipality  
(5) ☐ other (*specify*):

- c. ☐ except defendant (*name*):

- (1) ☐ a business organization, form unknown  
(2) ☐ a corporation  
(3) ☐ an unincorporated entity (*describe*):

- (4) ☐ a public entity (*describe*):  
(5) ☐ other (*specify*):

- b. ☐ except defendant (*name*):

- (1) ☐ a business organization, form unknown  
(2) ☐ a corporation  
(3) ☐ an unincorporated entity (*describe*):

- (4) ☐ a public entity (*describe*):  
(5) ☐ other (*specify*):

- d. ☐ except defendant (*name*):

- (1) ☐ a business organization, form unknown  
(2) ☐ a corporation  
(3) ☐ an unincorporated entity (*describe*):

- (4) ☐ a public entity (*describe*):  
(5) ☐ other (*specify*):

☐ Information about additional defendants who are not natural persons is contained in Complaint—Attachment 5.

6. The true names and capacities of defendants sued as Does are unknown to plaintiff.

7. ☐ Defendants who are joined pursuant to Code of Civil Procedure section 382 are (*names*):

8. This court is the proper court because

- a. ☐ at least one defendant now resides in its jurisdictional area.  
b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.  
c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.  
d. ☐ other (*specify*):

9. ☒ Plaintiff is required to comply with a claims statute, and

- a. ☒ plaintiff has complied with applicable claims statutes, or  
b. ☐ plaintiff is excused from complying because (*specify*):



SHORT TITLE: PATTERSON v. CITY AND COUNTY OF SAN FRANCISCO

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☐ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☐ Premises Liability
- f. ☒ Other (*specify*):  
Assault, battery, violation of civil rights

11. Plaintiff has suffered

- a. ☐ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☐ loss of earning capacity
- g. ☒ other damage (*specify*):  
Imprisonment

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Complaint—Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. PLAINTIFF PRAYS for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages
- b. The amount of damages is (*you must check (1) in cases for personal injury or wrongful death*):
- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: August 17, 2005

Byron C. Thompson

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)



**NOTICE TO PLAINTIFF**

RECEIVED  
MAYOR'S OFFICE

05 SEP 16 AM 11:53

A Case Management Conference is set for

**DATE: FEB-03-2006**

**TIME: 9:00AM**

**PLACE: Department 212  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 212 (g)(1) requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state:

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.  
(SEE LOCAL RULE 3)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Byron C. Thompson, Esq. (SBN 85675) LAW OFFICES OF BYRON C. THOMPSON 1714 Franklin Street, Suite 350, Oakland, CA 94612  TELEPHONE NO.: (510) 835-1600 FAX NO. (Optional): (510) 835-2077 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): CEDRICK PATTERSON		FOR COURT USE ONLY RECEIVED MAYOR'S OFFICE 05 SEP 16 AM 11:52
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: Same as above CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: UNLIMITED JURISDICTION		
PLAINTIFF/PETITIONER: CEDRICK PATTERSON  DEFENDANT/RESPONDENT: CITY AND COUNTY OF SAN FRANCISCO, et.al.		CASE NUMBER: CGC-05-444569
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a. ☒ summons
  - b. ☒ complaint
  - c. ☐ Alternative Dispute Resolution (ADR) package
  - d. ☐ Civil Case Cover Sheet (served in complex cases only)
  - e. ☐ cross-complaint
  - f. ☒ other (specify documents): NOTICE TO PLAINTIFF
3. a. Party served (specify name of party as shown on documents served):  
 CITY AND COUNTY OF SAN FRANCISCO, et.al.  
 b. Person served: ☐ party in item 3a ☒ other (specify name and relationship to the party named in item 3a):
4. Address where the party was served:  
 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102
5. I served the party (check proper box)
  - a. ☐ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): (2) at (time):
  - b. ☒ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3b):
  - (1) ☒ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
  - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
  - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
  - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
  - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: CEDRICK PATTERSON	CASE NUMBER: CGC-05-444569
DEFENDANT/RESPONDENT: CITY AND COUNTY OF SAN FRANCISCO, et.al.	

- c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ **by other means** (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☐ On behalf of (specify):

under the following Code of Civil Procedure section:

- |                                                                   |                                                                       |
|-------------------------------------------------------------------|-----------------------------------------------------------------------|
| <input type="checkbox"/> 416.10 (corporation)                     | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|                                                                   | <input type="checkbox"/> other:                                       |

7. **Person who served papers**

- a. Name: Kenneth Shaw
- b. Address: 3300 Telegraph Avenue, Oakland, CA 94609
- c. Telephone number: (510) 332-7384
- d. The fee for service was: \$
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor.
- (ii) Registration No.:
- (iii) County: ALAMEDA

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

Kenneth Shaw

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)

# **EXHIBIT B**

**COPY**

1 DENNIS J. HERRERA, State Bar #139669  
 City Attorney  
 2 JOANNE HOEPER, State Bar #114961  
 Chief Trial Deputy  
 3 SCOTT D. WIENER, State Bar #189266  
 Deputy City Attorney  
 4 Fox Plaza  
 1390 Market Street, 6<sup>th</sup> Floor  
 5 San Francisco, California 94102-5408  
 Telephone: (415) 554-4283  
 6 Facsimile: (415) 554-3837

ENDORSED  
 FILED  
 San Francisco County Superior Court  
 OCT 12 2005

GORDON PARK-LI, Clerk  
 BY: RONNIE OTERO

7 Attorneys for Defendant  
 8 CITY AND COUNTY OF SAN FRANCISCO

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 UNLIMITED JURISDICTION

12 CEDRICK PATTERSON,

13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN  
 16 FRANCISCO and DOES 1 through 15,

17 Defendants.

Case No. 444569

ANSWER OF DEFENDANT CITY  
 AND COUNTY OF SAN FRANCISCO

Date Action Filed: September 1, 2005  
 Trial Date: None set

1 Defendant City and County of San Francisco hereby answers plaintiff's unverified  
2 complaint as follows:

3 Pursuant to California Code of Civil Procedure Section 431.30, defendant denies each and  
4 every allegation contained in plaintiff's complaint.

5 Defendant denies that plaintiff has been damaged in any sum or sums, or otherwise, or at all,  
6 by reason of any act or omission of defendant.

### 7 **AFFIRMATIVE DEFENSES**

#### 8 **First Affirmative Defense**

9 The complaint fails to state facts sufficient to constitute a cause of action against this  
10 answering defendant.

#### 11 **Second Affirmative Defense**

12 The City and County of San Francisco, a public entity, is immune from liability for  
13 exemplary damages herein pursuant to the provisions of Section 818 of the California Government  
14 Code.

#### 15 **Third Affirmative Defense**

16 Plaintiff was comparatively negligent in and about the matters and activities alleged in the  
17 complaint; said comparative negligence contributed to and was a proximate cause of plaintiff's  
18 alleged injuries and damages, if any, or was the sole cause thereof; and if plaintiff is entitled to  
19 recover damages against defendants by virtue of said complaint, defendants pray that the recovery  
20 be diminished or extinguished by reason of the negligence of the plaintiff in proportion to the  
21 degree of fault attributable to the plaintiff.

#### 22 **Fourth Affirmative Defense**

23 Plaintiff assumed the risk of injury, and her claim is therefore barred.

#### 24 **Fifth Affirmative Defense**

25 The officer or officers involved at all times acted with probable cause and/or reasonable  
26 suspicion and were therefore justified in detaining, arresting, restraining, and/or using force on  
27 Plaintiff.

**Sixth Affirmative Defense**

The officer or officers involved acted in accordance with and pursuant to §§834, 834a 835, 835a, 835, and 836.5 of the California Penal Code.

**Seventh Affirmative Defense**

The officer or officers' actions were subjectively and objectively reasonable so as to entitle them to absolute or qualified immunity for any acts within the scope of their employment herein.

**Eighth Affirmative Defense**

Plaintiff's complaint is barred by the doctrine of res judicata and/or collateral estoppel.

**Ninth Affirmative Defense**

Defendant is immune from liability because the involved officer or officers were acting to execute or enforce the law.

**Tenth Affirmative Defense**

Defendant is immune from liability because the involved officer or officers were instituting or prosecuting a judicial or administrative proceeding.

**Eleventh Affirmative Defense**

Any force that the involved officer or officers used against Plaintiff was reasonable, privileged, and justified in light of the circumstances at issue and in light of plaintiff's own actions and conduct.

**Twelfth Affirmative Defense**

Plaintiff knowingly, voluntarily and/or willingly consented to the use of force upon his person.

**Thirteenth Affirmative Defense**

The City is immune for an injury to any prisoner, pursuant to Government Code section 844.6.

**Thirteenth Affirmative Defense**

No more force was used on plaintiff's person than was necessary to effect detention, overcome any resistance thereto, prevent escape therefrom, prevent injury to the officers, and/or to facilitate and safeguard a valid police investigation and/or arrest.



**Fourteenth Affirmative Defense**

At all times mentioned in the complaint, the plaintiff acted in a careless, reckless, wanton and negligent manner in and about the matters set forth in the complaint; such careless, reckless, wanton and negligent conduct proximately contributed to the injuries and damages, if any, sustained or claimed by plaintiff; and as a consequence, plaintiff's claim is barred.

**Fifteenth Affirmative Defense**

The employees, officials and agents of defendant were at all times material hereto acting with both subjective and objective good faith, such that any claim for relief that plaintiff may have is barred by law.

**Sixteenth Affirmative Defense**

The complaint is barred by the provisions and immunities of the California Tort Claims Act, without limitation: Government Code Sections 815; 815.2; 815.3; 815.4; 815.6; 816; 818; 818.2; 818.4; 818.5; 818.6; 818.7; 818.8; 818.9; 820; 820.2; 820.21; 820.25; 820.4; 820.6; 820.8; 820.9; 821; 821.2; 821.4; 821.5; 821.6; 821.8; 822; 822.2; 823; 825; 825.4; 825.6; 827; 830; 830.1; 830.2; 830.4; 830.5; 830.6; 830.8; 830.9; 831; 831.2; 831.21; 831.25; 831.3; 831.4; 831.5; 831.6; 831.7; 831.8; 835; 835.2; 835.4; 840; 840.2; 840.4; 840.6; 844; 844.6; 845; 845.2; 845.4; 845.6; 845.8; 846; 850; 850.2; 850.4; 850.6; 850.8; 854; 854.2; 854.3; 854.4; 854.5; 854.8; 855; 855.2; 855.4; 855.6; 855.8; 856; 856.2; 856.4; 856.6; 860; 860.2; 860.4; 862; 865; 866; 867; 895; 895.2; 895.4; 895.6; 895.8. Under California law, these defendants are liable only pursuant to statute.

**Seventeenth Affirmative Defense**

Plaintiff failed to comply with the claims requirements with respect to suits against public entities, pursuant to Government Code Sections 900-915.4, 930-951 inclusive and other applicable statutes.

**Eighteenth Affirmative Defense**

Plaintiff failed to comply with the statute of limitations pursuant to California Code of Civil Procedure §340 and 342, and other applicable statutes.

**Nineteenth Affirmative Defense**

Plaintiff failed to exercise reasonable care and diligence to mitigate plaintiff's alleged damages.

**Twentieth Affirmative Defense**

Defendant alleges that the fault of persons other than defendant contributed to and proximately caused any occurrence described in the Complaint, and that under the principles of *American Motorcycle Ass'n v. Superior Court* (1978) 20 Cal.3d 578, the percentage of such contribution should be established by special verdict or other procedure, and that defendant's ultimate liability be reduced to the extent of such contribution.

**Twenty-First Affirmative Defense**

In the event that defendant is found to be liable – which liability is specifically denied and stated merely for the purposes of this affirmative defense – such liability, if any, for non-economic damages shall be several, and not joint, pursuant to the California Fair Responsibility Act of 1986 (Proposition 51) as set forth in Section 1432 et seq of the California Civil Code. Defendant requests that the trier of fact be instructed that the amount of non-economic damages be allocated in direct proportion to the percentage of fault, if any, assessed against each person or entity to which the Act applies and that a separate judgment be rendered against each such person or entity in the amount of such non-economic damages attributable to that person or entity.

**Twenty-Second Affirmative Defense**

The provisions of the Tort Claims Act of the California Government Code as a measure of the duty of defendants.

**Twenty-Third Affirmative Defense**

Any injury to Plaintiff was caused by his own resistance and not by any actions of the officers.

**Twenty-Fourth Affirmative Defense**

Defendant presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Defendant reserves the right to assert additional defenses in the event that discovery indicates that they would be appropriate.

WHEREFORE, defendant prays for judgment as follows:

1. That plaintiff take nothing from Defendant by plaintiff's complaint.
2. That the Court dismiss plaintiff's complaint with prejudice and enter judgment in favor of Defendant;
3. That the Court award Defendant its costs of suit herein incurred; and
4. That the Court award such additional relief as the Court deems just and proper.

Dated: October 11, 2005

DENNIS J. HERRERA  
City Attorney  
JOANNE HOEPER  
Chief Trial Deputy  
SCOTT D. WIENER  
Deputy City Attorney

By: 

SCOTT D. WIENER

Attorneys for Defendant  
CITY AND COUNTY OF SAN FRANCISCO

**PATTERSON V. CCSF - SF SUPERIOR COURT NO. CGC-05-444569****PROOF OF SERVICE**

I, HELEN LAU, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On October 12, 2005, I served the attached:

**ANSWER OF DEFENDANT CITY AND COUNTY OF SAN FRANCISCO**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Byron C. Thompson, Esq.  
Law Offices of Byron C. Thompson  
1714 Franklin Street, Suite 350  
Oakland, CA 94612  
Telephone: (510) 835-1600  
Facsimile: (510) 835-2077

and served the named document in the manner indicated below:

- ☒ **BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, City and County of San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.
- ☐ **BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).
- ☐ **BY EXPRESS SERVICES OVERNITE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered to EXPRESS SERVICES OVERNITE for overnight courier service to the office(s) of the addressee(s).
- ☐ **BY FACSIMILE:** I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The fax number of the machine from which the document was transmitted was (415)554-3837. The fax number(s) of the machine(s) to which the document(s) were transmitted are listed above. The fax transmission was reported as complete and without error. I caused the transmitting facsimile machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 12, 2005, at San Francisco, California.

  
HELEN LAU

**PATTERSON V. CCSF – SF SUPERIOR COURT NO. CGC-05-444569****PROOF OF SERVICE**

I, HELEN LAU, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On October 13, 2005, I served the attached:

**NOTICE OF REMOVAL (28 U.S.C. §§ 1441, 1446)**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Byron C. Thompson, Esq.  
Law Offices of Byron C. Thompson  
1714 Franklin Street, Suite 350  
Oakland, CA 94612  
Telephone: (510) 835-1600  
Facsimile: (510) 835-2077

and served the named document in the manner indicated below:



**BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, City and County of San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.



**BY PERSONAL SERVICE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).



**BY EXPRESS SERVICES OVERNITE:** I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered to EXPRESS SERVICES OVERNITE for overnight courier service to the office(s) of the addressee(s).



**BY FACSIMILE:** I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The fax number of the machine from which the document was transmitted was (415)554-3837. The fax number(s) of the machine(s) to which the document(s) were transmitted are listed above. The fax transmission was reported as complete and without error. I caused the transmitting facsimile machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 13, 2005, at San Francisco, California.

  
HELEN LAU